

The Address and reasons of dissent of the minority of the convention, of the state of Pennsylvania, to their constituents.

THE ADDRESS AND REASONS OF DISSENT OF THE MINORITY of the CONVENTION, *Of the State of Pennsylvania, to their Constituents.*

IT was not until after the termination of the late glorious contest, which made the people of the United States an Independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and in the virtue and patriotism of the people, with their disposition to promote the common cause, supplied the want of power in Congress.

The requisition of Congress for the five *per cent.* impost was made before the peace, so early as the first of February 1781, but was prevented taking effect by the refusal of one state; yet it is probable every state in the union would have agreed to this measure at that period, had it not been for the extravagant terms in which it was demanded. The requisition was new moulded in the year 1783, and accompanied with additional demand of certain supplementary funds for 25 years. Peace had now taken place, and the United States found themselves laboring under a considerable foreign and domestic debt, incurred during the war. The requisition of 1783, was commensurate with the interest of the debt as it was then calculated; but it has been more accurately ascertained since that time. The domestic debt has been found to fall several millions of dollars short of the calculation, and it has lately been considerably diminished by large sales of the western lands. The states have been called on by congress annually for supplies until the general system of finance proposed in 1783 should take place.

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It was at this time that the want of an efficient federal government was first complained of, and that the powers vested in congress were found to be inadequate to the procuring of the benefits that should result from the union. The impost was granted by most of the states, but many refused the supplementary funds; the annual requisitions were set at nought by some of the states, while others complied with them by legislative acts, but were tardy in their payments, and congress found themselves incapable of complying with their engagements, and supporting the federal government. It was found that our national character was sinking to the opinion of foreign nations. The congress could make treaties of commerce, but could not enforce the observance of them. We were suffering from the restrictions of foreign nations, who had shackled our commerce, while we were unable to retaliate: and all now agreed that it would be advantageous to the union to enlarge the powers of congress; that they should be enabled in the amplest manner to regulate commerce, and to lay and collect duties on the imports throughout the United States. With this view a convention was first proposed by Virginia, and finally recommended by congress for the different states to appoint deputies to meet in convention, " for the purposes of revising and amending the present articles of confederation so as to make them adequate to the exigencies of the union." This recommendation the legislatures of twelve states complied with so hastily as not to consult their constituents on the subject; and though the different legislatures had no authority from their constituents for the purpose, they probably apprehended the necessity would justify the measure; and none of them extended their ideas at that time further than " revising and amending the present articles of confederation." Pennsylvania by the act appointing deputies expressly confined their powers to this object; and through it is probable that some of the members of the assembly of this state, had at that time in contemplation to annihilate the present confederation, as well as the constitution of Pennsylvania, yet the plan was not sufficiently matured to communicate it to the public.

The majority of the legislature of this commonwealth, were at that time under the influence of the members from the city of Philadelphia. They agreed that the deputies sent by

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them to convention should have no compensation for their services, which determination was calculated to prevent the election of any member who resided at a distance from the city. It was in vain for the minority to attempt electing delegates to the convention, who understood the circumstances, and the feelings of the people, and had a common interest with them. They found a disposition in the leaders of the majority of the house to chuse themselves and some of their dependants---The minority attempted to prevent this by agreeing to vote for some of the leading members, who they knew had influence to be appointed at any rate, in hopes of carrying with them some respectable citizens of Philadelphia, in whose principles and integrity they could have more confidence; but even in this they were disappointed, except in one member:--the eighth member was added at a subsequent session of the assembly.

The Continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others who were more remarkable for their ambition and cunning, than their patriotism; and of some who had been opponents to the independence of the United States.--The delegates from Pennsylvania were, six of them, uniform and decided opponents to the constitution of this commonwealth. The convention sat upwards of four months. The doors were kept shut, and the members brought under the most solemn engagements of secrecy.* Some of those who opposed their going so far beyond their powers, retired, hopeless, from the convention, others had the firmness to refuse signing the plan altogether: and many who did sign it, did it not as a system they wholly approved, but as the best that could be then obtained, and notwithstanding the time spent on this subject it is agreed on all hands to be a work of haste and accommodation.

* *The Journals of the conclave are still concealed.*

Whilst the gilded chains were forging in the secret conclave, the meaner instruments of despotism, without, were busily employed in alarming the fears of the people, with dangers

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which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth could produce.

The proposed plan had not many hours issued forth from the womb of suspicious secrecy, until such as were prepared for the purpose, were carrying about petitions for people to sign, signifying their approbation of the system, and requesting the legislature to call a convention. While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for them selves, and *tar and feathers* were liberally promised to all those who would not immediately join in supporting the proposed government be it what it would.-- Under each circumstances petitions in favor of calling a convention were signed by great numbers in and about the city, before they had leisure to read and examine the system, many of whom, now they are better acquainted with it, and have had time to investigate its principles, are heartily opposed to it. The petitions were speedily handed in to the legislature.

Affairs were in this situation when on the 28th of September last, a resolution was proposed to the assembly by a member of the house who had been also a member of the federal convention, for calling a state convention, to be elected within *ten* days for the purpose of examining and adopting the proposed constitution of the United States, though at this time the house had not received it from Congress. This attempt was opposed by a minority, who after offering every argument in their power to prevent the precipitate measure, without effect, absented themselves from the house as the only alternative left them, to prevent the measure taking place previous to their constituents being acquainted with the business--That violence and outrage which had been so often threatened was now practised; some of the members were seized the next day by a mob collected for the purpose, and forcibly dragged to the house, and there detained by force whilst the quorum of the legislature, *so formed*, compleated their resolution. We shall dwell no longer on this subject, the people of Pennsylvania have been already acquainted therewith. We would only further observe that every member of the legislature, previously to taking

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his seat, by solemn oath or affirmation, declares, "that he will not do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state." And that constitution which they are so solemnly sworn to support cannot legally be altered but by a recommendation of the council of censors, who alone are authorised to propose alterations and amendments, and even these must be published at least *six months*, for the consideration of the people,-- The proposed system of government for the United States, if adopted, will alter and may annihilate the constitution of Pennsylvania; and therefore the legislature had no authority whatever to recommend the calling a convention for that purpose. The proceeding could not be considered as binding on the people of this commonwealth. The house was formed by violence, some of the members composing it were detained there by force, which alone would have vitiated any proceedings, to which they were otherwise competent; but had the legislature been legally formed, this business was absolutely without their power.

In this situation of affairs were the subscribers elected members of the convention of Pennsylvania.--A convention called by a legislature in direct violation of their duty, and composed in part of members, who were compelled to attend for that purpose, to consider a constitution proposed by a convention of the United States, who were not appointed for the purpose of framing a new form of government, but whose powers were expressly confined to altering and amending the present articles of confederation.--Therefore the members of the continental convention in proposing the plan acted as individuals, and not as deputies from Pennsylvania.† --The assembly who called the state convention acted as individuals, and not as the legislature of Pennsylvania; nor could they or the convention chosen on their recommendation have authority to do any act or thing, that can alter or annihilate the constitution of Pennsylvania (both of which will be done by the new constitution) nor are their proceedings in our opinion, at all binding on the people.

† *The continental convention in direct violation of the 13th article of confederation, have declared "that the ratification of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same."---Thus has the plighted faith of the states been sported with! They had solemnly engaged that the confederation now*

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subsisting should be inviolably preserved by each of them, and the union thereby formed. Should be perpetual, unless the same should be altered by mutual consent.

The election for members of the convention was held at so early a period and the want of information was so great, that some of us did not know of it until after it was over, and we have reason to believe that great numbers of the people of Pennsylvania have not yet had an opportunity of sufficiently examining the proposed constitution.--We apprehend that no change can take place that will affect the internal government or constitution of this commonwealth, unless a majority of the people should evidence a wish for such a change; but on examining the number of votes given for members of the present state convention, we find that of upwards of *seventy thousand* freemen who are entitled to vote in Pennsylvania, the whole convention has been elected by about *thirteen thousand* voters, and though *two thirds* of the members of the convention have thought proper to ratify the proposed constitution, yet those *two thirds* were elected by the votes on only *six thousand and eight hundred* freemen.

In the city of Philadelphia and some of the eastern counties, the junto that took the lead in the business agreed to vote for none but such as would solemnly promise to adopt the system in *toto*, without exercising their judgement. In many of the counties the people did not attend the elections as they had not an opportunity of judging of the plan. Others did not consider them selves bound by the call of a set of men who assembled at the State-House in Philadelphia, and assumed the name of the legislature of Pennsylvania; and some were prevented from voting by the violence of the party who were determined at all events to force down the measure. To such lengths did the tools of despotism carry their outrage, that in the night of the election for members of convention, in the city of Philadelphia, several of the subscribers (being then in the city to transact your business) were grossly abused, ill-treated and insulted while they were quiet in their lodgings, though they did not interfere, nor had any thing to do with the said election, but as they apprehend, because they were suppose to be adverse to the proposed constitution, and would not namely surrender those sacred rights, which you had committed to their charge.

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The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting *in toto*. ---'Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments.--They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles nor even on the final question our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments, by offering the following propositions to the convention.

First. The right of conscience shall be held inviolable; and neither the legislative, executive nor judicial powers of the United States, shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

Second. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in these of the several states.

Third. That in all capital and criminal prosecutions, a man has a right to demand that cause and nature of this accusation, as well in the federal courts, as in those of the several states; to be heard by and ; to be confronted with the accusers and witnesses; to all for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to five evidence

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against himself; and that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

Fourth. That excessive bail ought not to be required, nor excessive fines imposed nor cruel nor unusual punishments inflicted.

Fifth. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

Sixth. That the people have a right to the freedom of speech, of writing and publishing their sentiments, therefore, the freedom of the press shall not be restrained by any law of the United States.

Seventh. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game, and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to and be governed by the civil powers.

Eighth. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands' they hold, and on all other lands in the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

Ninth. That no law shall be passed to restrain the legislatures of the several states, from enacting laws for imposing taxes, except imposts and duties on goods imported or

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exported, and that no taxes except imposts and duties on goods imported and exported, and postage on letters, shall be levied by the authority of Congress.

Tenth. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of the Congress; and that elections of representatives be annual.

Eleventh. That the power of organizing, arming and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom and independency of the several states shall be retained, and every power, jurisdiction and right, which is not by this constitution expressly delegated to the United States in Congress assembled.

Twelfth. That the legislative, executive, and judicial powers be kept separate; and to this end, that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.

Thirteenth. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.

Fourteenth. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to

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controversies between two or more states--between a state and citizens of different states --between citizens claiming lands under grants of different states; and between a state or the citizens thereof and foreign states; and in criminal cases to such only as are expressly enumerated in the constitution, and that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descents and distribution of the effects of deceased persons, the titles of land or goods, or the regulation of contracts in the individual states.

After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet those propositions, or something similar to them: and finally move the convention to adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

During the discussion we met with many insults, and some personal abuse; we were not even treated with decency, during the sitting of the convention, by the persons in the gallery of the house; however, we flatter ourselves that in contending for the preservation of those invaluable rights you have thought proper to commit to our charge, we acted with spirit becoming freemen, and being desirous that you might know the principles which actuated our conduct, and being prohibited from inserting our reasons of dissent on the minutes of the convention, we have subjoined them for your consideration, as to you alone we are accountable. It remains with you whether you will think those inestimable privileges, which you have so ably contended for, should be sacrificed at the shrine of despotism, or whether you mean to contend for them with the same spirit that has often baffled the attempts of an aristocratic faction, to rivet the shackles of slavery on you, and your unborn posterity.

Our objections are comprised under three general heads of dissent, viz.

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WE DISSENT, First, Because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.

If any doubt could have been entertained of the truth of the foregoing principle, it has been fully removed by the concession of *Mr. Wilson*, one of the majority on this question, and who was one of the deputies in the late general convention. In justice to him, we will give his own words; they are as follows, viz. "The extent of country for which the new constitution was required; produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical; to a middling territory (as Montesquieu has termed it) the monarchical; and to an extensive territory, the despotic form of government, is best adapted. Regarding then the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment role. For, we knew that, although our constituents would cheerfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power."--And again in another part of his speech he continues.--" Is it probable that the dissolution of the state governments, and the establishment of one *consolidated empire* would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the *supremacy of despotic power*. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which in extent was far inferior to the dominion of America."

We dissent, secondly, because the powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the

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several states, and produce from their ruins one consolidated government, which from the nature of things will be *an iron handed despotism*, as nothing short of the supremacy of despotic sway could connect and govern these United States under one government.

As the truth of this position is of such decisive importance, it ought to be fully investigated, and if it is founded to be clearly ascertained; for, should demonstrated, that the powers vested by this constitution in Congress, will have such an effect, as necessarily to produce one consolidated government, the question then will be reduced to this short issue, viz. whether satiated with the blessings of liberty; whether repenting of the folly of so recently asserting their unalienable rights, against foreign despots, at the expence of so much blood and treasure, and such painful and arduous struggles, the people of America are now willing to resign every privilege of freemen, and submit to the domination of an absolute government, that will embrace all America in one chain of despotism; or whether they will with virtuous indignation, spurn at the shackles prepared for them, and confirm their liberties by a conduct becoming freemen.

That the new government will not be a confederacy of states, as it ought, but one consolidated government, founded upon the destruction of the several governments of the states, we shall now shew.

The powers of Congress under the new constitution, are compleat and unlimited over the *purse* and the *sword*, and are perfectly independent of, and supreme over, the state governments: whose intervention in these great points is entirely destroyed. By virtue of their power of taxation, Congress may command the whole, or any part of the property of the people. They may impose what imposts upon commerce; they may impose what land-taxes, poll-taxes, excises, duties on all written instruments, and duties on every other article that may judge proper; in short, every species of taxation, whether of an external or internal nature is comprised in section the 8th, of article the 1st, viz. "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States."

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As there is no one article of taxation reserved to the state governments, the Congress may monopolise every source of revenue, and thus indirectly demolish the state governments, for without funds they could not exist, the taxes, duties and excises imposed by Congress may be so high as to render it impracticable to levy further sums on the same articles; but whether this should be the case or not, if the state governments should presume to impose taxes, duties or excises, on the same articles with Congress, the latter may abrogate and repeal the laws whereby they are imposed, upon the allegation that they interfere with the due collection of their taxes, duties or excises, by virtue of the following clause, part of section 8th, article 1st, via. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

The congress might gloss over this conduct by construing every purpose for which the state legislatures now lay taxes, to be for the "*general welfare*," and therefore as of their jurisdiction.

And the supremacy of the laws of the United States is established by article 6th, viz. "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and *all treaties* made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to be contrary notwithstanding.*" It has been alledged that the words "pursuant to the constitution," are a restriction upon the authority of Congress; but when it is considered that by other sections they are invested with every efficient power of government, and which may be exercised to the absolute destruction of the state governments, without any violation of ever the forms of the constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive; and only introduced as a nd upon the real nature of the

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government. In our opinion, "pursuant to the constitution," will be co-extensive with the *will* and *pleasure* of Congress, which, indeed, will be the only limitation of their powers.

We apprehend, that two co-ordinate sovereignties would be a solecism in politics. That therefore there is no line of distinction drawn between the general, and state governments; as the sphere of their jurisdiction is undefined; it would be contrary to the nature of things, that both should exist together, one or the other would necessarily triumph in the fullness of dominion. However the contest could not be of long continuance, as the state governments are divested of every means of defence, and will be obliged by "the supreme law of the land" *to yield at discretion*.

It has been objected to this total destruction of the state governments, that the existence of their legislatures is made essential to the organization of Congress; that they must assemble for the appointment of the senators and president general of the United States. True, the state legislatures may be continued for some years, as boards of appointment, merely, after they are divested of every other function; but the framers of the constitution foreseeing that the people will soon be disgusted with this solemn mockery of a government without power and usefulness, have made a provision for relieving them from the imposition, in section 4th, of article 1st, viz. " The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by legislature thereof; *but the Congress may at any time, by law make or alter such regulations; except as to the place of chusing senators*.

As Congress have the controul over the time of the appointment of the president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various pretences, such, as an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest; and having thus obtained the life-estates in the government, they may fill up the vacancies themselves, by their controul over the mode of appointment; with this

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exception in regard to the senators, that as the place of appointment for them, must, by the constitution, be in the particular state, they may depute some body in the respective states, to fill up the vacancies in the senate, occasioned by death, until they can venture to assume it themselves. In this manner, may the only restriction in this cause, be evaded. By virtue of the foregoing section, when the spirit of the people shall be gradually broken; when the general government shall be firmly established, and when a numerous standing army shall render opposition vain, the Congress may compleat the system of despotism, in renouncing all dependance on the people, by continuing themselves, and children in the government.

The celebrated *Montesquieu*, in his *Spirit of Laws*, vol. 1, page 12th, says " That in a democracy there can be no exercise of sovereignty, but by the suffrages of the people, which are their will; now the sovereigns will is the sovereign himself; the laws therefore, which establish the right of suffrage, are fundamental to this government. In fact it is as important to regulate in a republic in what manner, by whom, and concerning what, suffrages are to be given, as it is in a monarch to know who is the prince, and after what manner he ought to govern." The *time*, *mode*, and *place* of the election of representatives, senators and president general of the United States, ought not to be under the controul of Congress, but fundamentally ascertained an established.

The new constitution, consistently with the plan of consolidation, contains no reservation of the rights and priviledges of the state governments, which was made in the confederation of the year 1778, by article the 2d, viz. "That each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

The legislative power vested in Congress by the foregoing recited sections, is so unlimited in its nature; may be so comprehensive and boundless in its exercise, that this alone would be amply sufficient to annihilate the state governments, and swallow them up in the grand vortex of general empire.

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The judicial powers vested in Congress are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries, and when to consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do not hesitate to pronounce that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution, in the tribunals of Congress; powers which do not exist in Pennsylvania, unless so far as they can be incorporated with jury trial, would, in this state, greatly contribute to this event. The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery, with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

In short, consolidation pervades the whole constitution. It begins with an annunciation that such was the intention. The main pillars of the fabric correspond with it, and the concluding paragraph is a confirmation of it--The preamble begins with the words, "We the people of the United States," which is the style of a compact between individuals entering into a state of society, and not that of a confederation of states. The other features of consolidation, we have before noticed.

Thus we have fully established the position, that the powers vested by this constitution in Congress, will effect a consolidation of the states under one government, which even the advocates of this constitution admit, could not be done, without the sacrifice of all liberty.

3. We dissent, Thirdly, Because if it were practicable to govern so extensive a territory as these United States, includes, on the plan of a consolidated government, consistent with the principles of liberty and the happiness of the people, yet the construction of this constitution is not calculated to attain the object, for independent of the nature of the case,

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it would of itself, necessarily, produce a despotism, and that not by the usual gradations, but with the celerity that has hitherto only attended revolutions affected by the sword.

To establish the truth of this position, a cursory investigation of the principles and form of this constitution will suffice.

The first consideration that this review suggests, is the omission of a **BILL OF RIGHTS**, ascertaining and fundamentally establishing those unalienable and personal rights of men, without the full, free and secure enjoyment of which there can be no liberty, and over which it is not necessary for a good government to have the controul. The principal of which are the rights of conscience, personal liberty by the clear and unequivocal establishment of the writ of *habeas corpus*, jury trial in criminal and civil cases, by an impartial jury of the vicinage or county, with the common law proceedings, for the safety of the accused in criminal prosecutions; and the liberty of the press, that scourge of tyrants, and the grand bulwark of every other liberty and privilege: the stipulations heretofore made in favour of them in the state constitutions, are entirely superceded by this constitution.

The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence.--To produce these essential requisites, the representation ought to be fair, equal and sufficiently numerous, to possess the same interests, feelings, opinions and views, which the people themselves would possess, were they all assembled; and so numerous as to prevent bribery and undue influence, and so responsible to the people, by frequent and fair elections, as to prevent their neglecting, or sacrificing the views and interests of their constituents, to their own pursuits.

We will now bring the legislature under this constitution to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation.

The house of representatives is to consist of 65 members; that is one for every 50,000 inhabitants, to be chosen every two years. Thirty-three members will form a quorum for

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doing business, and seventeen of these, being the majority, determine the sense of the house.

The senate, the other constituent branch of the legislature, consists of 26 members, being *two* from each state, appointed by their legislatures every six years--fourteen senators make a quorum; the majority of whom, eight, determines the sense of that body: except in judging on impeachments, or in making treaties, or in expelling a member, when two thirds of the senators present, must concur.

The president is to have the controul over the enacting of laws, so far as to make the concurrence of *two* thirds of the representatives and senators present necessary, if he should object to the laws.

Thus it appears, that the liberties, happiness, interests, and great concerns, of the whole United States, may be dependent upon the integrity, virtue, wisdom. and knowledge of 25 or 26 men. How inadequate and unsafe a representation! Inadequate, because the sense and views of 3 or 4 millions of people diffused over so extensive a territory, comprising such various climates, products, habits, interests, and opinions, can not be collected in so small a body; and besides, it is not a fair and equal representation of the people, even in proportion to its number, for the smallest state has as much weight in the senate as the largest, and from the smallest of the number to be chosen for both branches of the legislature; and from the mode of election and appointment; which is under the controul of Congress; and from the nature of the thing, men of the most elevated rank in life, will alone be chosen. The other orders in the society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.

The representation is unsafe, because in the exercise of such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honor

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and emolument, at the disposal of the executive; by the arts and address of the great and designing; and by direct bribery.

The representation is moreover inadequate and unsafe, because of the long terms for which it is appointed, and the mode of its appointment, by which congress may not only controul the choice of the people, but may so manage as to divest the people of this fundamental right, and become self-elected.

The number of members in the house of representatives *may* be encreased to one for every 30,000 inhabitants. But when we consider, that this cannot be done without the consent of the senate, who from their share i the legislative, in the executive, and judicial departments, and permanency of appointment, will be the great efficient body in this government, and whose weight and predominancy would be abridged by an encrease of the representatives, we are persuaded that this is a circumstance that cannot be expected. On the contrary, the number of representatives will probably be continued at 65, although the population of the country may swell to treble what it now is; unless a revolution should effect a change.

We have before noticed the judicial power as it would effect a consolidation of the states into one government; we will now examine it, as it would affect the liberties and welfare of the people, supporting such a government were practicable and proper.

The judicial power, under the proposed constitution, is founded on the well-known principles of the *civil law*, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the superior, upon the whole question; so that *facts*, as well as *law*, would be re-examined, and even new facts brought forward in the court of appeals; and to use the words of a very eminent Civilian, " The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."

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That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances; 1st. That the trial by jury; which is the grand characteristic of the common law is secured by the constitution, only in criminal cases.--2d. That the appeal from both *law* and *fact* is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is by adopting the principles and practice of the civil law; unless the United States should be drawn into the absurdity of calling and swearing juries, merely, for the purpose of contradicting the verdicts, which would render juries contemptible and worse than useless.--3d. That the courts to be established would decide on all cases *of law and equity*, which is a well known characteristic of the civil law, and these courts would have consusance not only of the laws of the United States and treaties, and of cases affecting ambassadors, but of all cases of *admiralty and maritime jurisdiction*, which last are matters belonging exclusively to the civil law, in every nation in Christendom.

Not to enlarge upon the loss of the invaluable right of trial by an unbiassed jury, so dear to every friend of liberty, the monstrous expence and inconveniences of the mode of proceedings to be adopted, are such, as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expence of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge *Blackstone*, that a question, only on the property of an ox, of the value of *three* guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great Britain, by way of *appeal* to the house of lords, where the question of law and fact was finally determined. He adds, that no pique or spirit, could in the court of king's bench or common pleas at Westminster, have given continuance to such a cause for a tenth part of the time, nor have cost a twentieth part of the expence. Yet the

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costs in the courts of king's bench and common pleas in England, are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendent privilege of trial by jury, with the loss of which, it remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate; and that *trial by jury* and the liberty of the people went out together. At the same time we regret the intolerable delay, the enormous expences and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps, with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice; for the common people will not be able to contend or struggle against it.

Trial by jury in criminal cases may also be excluded by declaring that the libeller for instance shall be liable to an action of debt for a specified sum; thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes,) will, at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighbourhood or country. Thus an inhabitant of Pittsburgh; on a charge of crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so *vice versa*. To conclude this head: We observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support in part from fees, alterable by the legislature.

The next consideration that the constitution presents, is the undue and dangerous mixture of the powers of government; the same body a possessing legislative, executive, and

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judicial powers. The senate is a constituent branch of the legislature, it has judicial power in judging on impeachments, and in this case unites in some measure, the characters of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate, and therefore they derive their offices in part from the senate. This may bias the judgements of the senators and tend to skreen great delinquents from punishment. And the senate has, moreover, various and great executive powers, viz. in concurrence with the president-general, they form treaties with foreign nations that may controul and abrogate the constitutions and laws of the several states. Indeed, there is no power, privilege or liberty of the state governments, or of the people, but what may be affected by virtue of this power. For all treaties, made by them, are to be the "supreme law of the land, any thing in the constitution or laws of any state, to the contrary notwithstanding."

And this great power may be exercised by the president and 10 senators, (being two-thirds of 14, which is a quorum of that body) what an inducement would this offer to the ministers of foreign powers to compass by bribery *such concessions*, as could not otherwise be obtained. It is the unvaried usage of all free states, whenever treaties interfere with the positive laws of the land, to make the intervention of the legislature necessary to give them operation. This became necessary and was afforded by the parliament of Great Britain, in consequence of the late commercial treaty between that kingdom and France.- As the senate judges on impeachments, who is to try the members of the senate for the abuse of this power! And none of the great appointments to office can be made without the consent of the senate.

Such various, extensive, and important powers combined in one body of men, are inconsistent with all freedom; the celebrated Montesquieu tells us, that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or s e should enact tyrannical laws, to execute them [in?] a tyrannical manner."

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"Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject, would be exposed to arbitrary controul; for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an end of everything, were the same man, or the same body of the nobles, or of the people, to exercise these three powers; that of enacting laws; that of executing the public resolutions; and that of judging the crimes or differences of individuals."

The president general is dangerously connected with the senate, his coincidence with the views of the ruling junto in that body, is made essential to his weight and importance in the government, which will destroy all independency and purity in the executive department, and having the power of pardoning without the concurrence of a council, he may screen from punishment the most treasonable attempts that may be made on the liberties of the people, when instigated by his coadjutors in the senate. Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.

We have before considered internal taxation, as it would effect the destruction of the state governments, and produce on consolidated government. We will now consider that subject as it affects the personal concerns of the people.

The power of direct taxation applies to every individual, as congress under this government is expressly vested with the authority of laying a capitation or poll-tax upon every person to any amount. This is a tax that, however oppressive in its nature, and unequal in its operation, is certain as to its produce and simple in its collection; it cannot be evaded like the objects of imposts or excise, and will be paid, because all that a man hath

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will he give for his head. This tax is so congenial to the nature of despotism, that it has ever been a favorite under such governments. Some of those who were in the late general convention from this state, have long labored to introduce a poll-tax among us.

The power of direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, &c. to any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative, either to pay the tax, or let their property be taken for all resistance will be vain. The standing army and select militia would enforce the collection.

For the moderate exercise of this power, there is no controul left in the state governments, whose intervention is destroyed. No relief, or redress of grievances can be extended, as heretofore by them. There is not even a declaration of **RIGHTS** to which the people may appeal for the vindication of their wrongs in the courts of justice. They must therefore, implicitly, obey the most arbitrary laws, as the worst of them, will be pursuant to the principles and form of the constitution, and that strongest of all checks upon the conduct of administration, *responsibility to the people*, will not exist in this government. The permanency of the appointments of senators and representatives, and the controul the congress have over their election, will place them independent of the sentiments and resentment of the people, and the administration having a greater interest in the government than in the community, there will be no consideration to restrain them from oppression and tyranny. In the government of this state, under the old confederation, the members of the legislature are taken from among the people and their interests and welfare are so inseparably connected with those of their constituents, that they can derive no advantage from oppressive laws and taxes, for they would suffer in common with their fellow citizens; would participate in the burthens they impose on the community, as they must return to the common level, after a short period; and notwithstanding every exertion of influence, every means of corruption, a necessary rotation excludes them from permanency in the legislature.

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This large state is to have but ten members in that congress which is to have the liberty, property and dearest concerns of every individual of this vast country at absolute command; and ever these ten persons, who are to be our only guardians; who are to supercede the legislature of Pennsylvania, will not be of the choice of the people, nor amenable to them. From the mode of their election and appointment they will consist of the lordly and high-minded; of men who will have no congenial feelings with the people, but a perfect indifference for, and contempt of them, they will consist of those harpies of power, that prey upon the very vitals; that riot on the miseries of the community. But we will suppose, although in all probability it may never be realised in fact, that our deputies in congress have the welfare of their constituents at heart, and will exert themselves in their behalf, what security could even this afford; what relief could they extend to their oppressed constituents? To attain this, the majority of the deputies of the twelve other states in congress must be alike well disposed; must alike forego the sweets of power, and relinquish the pursuits of ambition, which from the nature of things is not to be expected. If the people part with a responsible representation in the legislature, founded upon fair, certain and frequent election, they have nothing left they can call their own. Miserable is the lot of that people whose every concern depends on the **WILL** and **PLEASURE** of their rulers. Our soldiers will become Janissaries, and our officers of government Bashaws; in the short the system of despotism would soon be compleated.

From the foregoing investigation, it appears that the congress under this constitution, will not possess the confidence of the people, which is an essential requisite in a good government; for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be inconsistent with every idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could

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be placed on the people for their support: but on the contrary, that the government must be executed by force. They have therefore, made a provision for this purpose in a permanent **STANDING ARMY**, and a **MILITIA** that may be subjected to a strict discipline and government.

A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that congress have over the militia may be made instrumental to the destruction of all liberty, both public and private; whether of a personal, civil, or religious nature.

First, The personal liberty of every man probably from sixteen to sixty years of age, may be destroyed by the power congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself by the sentence of a court martial: To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

Secondly, The rights of conscience maybe violated, as there is no exemption of those persons, who are conscientiously scrupulous of bearing arms. These compose a respectable proportion of the community in the state. This is the more remarkable, because even when the distresses of the late war, and the evident disaffection of many citizens of that description, inflamed our passions, and when every person, who was obliged to risque his own life, must have been exasperated, against such as on any

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account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our state constitution, made the most express and decided declaration and stipulations in favor of the rights of conscience: but now when no necessity exists, those dearest rights of men are left insecure.

Thirdly, the absolute command of congress over the militia, may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be march to New-England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will, no doubt, be successful in subduing their liberty and independency; but in so doing, although the magnanimity of their minds will be extinguished, yet the meaner passions of resentment and revenge will be encreased, and those in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of rivetting the chains of despotism on their fellow citizens and on one another. This power can be exercised not only without violating the constitution but in strict conformity with it, it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department; judges, collectors, tax-gathers, excisemen, and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. Like the locusts of old, impoverishing and desolating all before them.

We have not noticed the smaller, nor many of the considerable blemishes, but have confined our objections to the great and essential defects; the main pillars of the

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constitution; which we have shewn to be inconsistent with the liberty and happiness of the people, as its establishment will annihilate the state governments, and produce one consolidated government that will eventually and speedily issue in the supremacy of despotism.

In this investigation, we have not confined our view to the interests or welfare of this state, in preference to the others. We have over looked all local circumstances--we have considered this subject on the broad scale of the general good; we have asserted the cause of the present and future ages; the cause of liberty and mankind.

Nathaniel Breeding, John Ludwig, John Smilie, Abraham Lincoln, Richard Baird, John Bishop, Adam Orth, Joseph Heister, John A. Hanna, Joseph Powel, John Whitehill, James Martin, John Harris, William Findley, Robert Whitehill, John Baird, John Reynolds, James Edgar, Jonathan Hoge, William Todd, Nicholas Lutz,

The yeas and nays upon the final vote were as follows, viz. **YEAS. YEAS.** George Latimer, John Hubley, Benjamin Rush, Jasper Yates, Hilary Baker, Henry Slagle, James Wilson, Thomas Campbell, Thomas M'Kean, Thomas Hartley, William M'Pherson, David Grier, John Hunn, John Black, George Gray, Benjamin Pedan, Samuel Ashmead, John Arndt, Enoch Edwards, Stephen Balliott, Henry Wynkoop, Joseph Horsefield, John Barclay, David Deshler, Thomas Yardley, William Wilson, Abraham Stout, John Boyd, Thomas Bull, Thomas Scott, Anthony Wayne, John Nevill, William Gibbons, John Allison, Richard Downing, Jonathan Roberts, Thomas Cheyney, John Richards John Hannah, F.A. Muhlenberg, Stephen Chambers, James Morris, Robert Coleman, Timothy Pickering, Sebastian Graff, Benjamin Elliot, 46 **NAYS. NAYS.** John Whitehill, William Findley, John Harris, John Baird, John Reynolds, William Todd, Robert Whitehill, James Marshall, Jonathan Hoge, James Edgar, Nicholas Lutz, Nathaniel Breeding. John Ludwig, John Smilie, Abraham Lincoln, Richard Baird, John Bishop, William Brown, Joseph Heisler, Adam Orth, James Martin, John Andre Hannah, Joseph Powell, 23 Philadelphia, December 12, 1787.

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